

IT 96-45

Tax Type: INCOME TAX

Issue: Withholding Tax - Failure To File Return/Make Payment

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	Docket #
)	FEIN
v.)	Track #
)	
TAXPAYER)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The *prima facie* case of the Illinois Department of Revenue (the "Department") was established by admission into evidence of the Notice of Deficiency issued by the Department on March 8, 1995 to TAXPAYER (the "Taxpayer") in the amount of \$605.85. The basis of the notice was that the taxpayer failed to file the first, third and fourth quarter withholding tax liabilities for the 1990 taxable year. The taxpayer timely protested the notice, requesting a hearing on the issue of abatement of penalties and interest. At the hearing it was established that the taxpayer had reasonable cause for an abatement of the penalties. There is no statutory provision for an abatement of interest. It is recommended that the decision of the Director of the Department be that the Notice of Deficiency be reduced to reflect the abatement of penalties.

Findings of Fact:

1. Pursuant to its grant of authority under provisions of statute 35 **ILCS** 904(c) the Department issued a Notice of Deficiency on March 8, 1995 for the first, third and fourth quarters of the 1990 taxable year and served such notice on the above-named taxpayer. (Dept. Ex. No. 1)

2. The taxpayer timely protested the notice on March 22, 1995, requesting an abatement of penalties and interest. The basis of the request was that the taxpayer had relied upon the services of a professional organization for payroll disbursements and preparation of the tax returns and the professional organization failed to do so. (Dept. Ex. No. 2)¹

3. The taxpayer is a not-for-profit organization that serves low income residents in a Chicago Housing Authority public housing development. (Dept. Ex. No. 2)

4. The taxpayer is exempt from payment of federal income tax pursuant to a 501(C)(3) designation granted by the Internal Revenue Service. (Taxpayer Ex. No. 7)

¹. The Protest of the taxpayer stated:

Background: TAXPAYER is a not-for-profit organization that serves low income residents in a Chicago Housing Authority public housing development.

The organization's primary source of funding were federal government grants during the periods in question. The then board of director retained the services of a professional organization (CENTER [sic] Center) to make payroll disbursements, prepare payroll tax returns and make other disbursements (including payments for payroll tax liabilities). The individuals who were members of the organization at that time (they are not involved with the organization now) had no training or knowledge in these matters. The [sic] had every reason to believe, and did believe, that these matters were being handled properly.

Other pertinent facts regarding this issue includes the following:

* The organization lacked funds to pay the penalties and interest due.

* The present board did not have access to records regarding the aforementioned matters.

5. A tax return for the taxpayer for 1989, dated January 31, 1990, and submitted to the Department, was signed by the fiscal agent. (Dept. Ex. No. 4)

6. The taxpayer had the CENTER serve as its fiscal agent starting March 24, 1989. (Taxpayer Ex. No. 2)

7. The CENTER reaffirmed their commitment to the taxpayer by letter dated May 26, 1989. (Taxpayer Ex. No. 3)²

8. This support was gradually diminished throughout the remainder of 1989. However, the CENTER continued to handle the accounts for the taxpayer until they found a suitable alternative as was discussed in the letter dated February 19, 1992, from the CENTER to the taxpayer. (Taxpayer Ex. No. 1)

Conclusions of Law:

². The letter demonstrates what the taxpayer had done in the previous months in building TAXPAYER and the relationship with the CENTER. It states:

The CENTER, which works with a number of low income organizations and groups in Chicago in relation to their self-help goals is happy to strongly recommend that TAXPAYER be awarded the Comprehensive Improvement Assistance Program (CIAP funds needed to prepare for resident management. [sic]

Your leadership group has made considerable progress, during the last eight months, in building ORGANIZATION. You have already demonstrated the capacity to develop an organization which is responsive to community issues and problems, beginning with your survey of those problems and the establishing of active resident committees related to security, maintenance and beautification.

We recognize, as you do, that ORGANIZATION, with effective and imaginative resident management, can be a model development not only in Chicago but nationally. In a largely segregated City, ORGANIZATION is a richly diverse community of black, white, Hispanic and other groups. And, unlike much of the cement and steel highrise [sic] public housing lined up in congested areas, Lathrop's mid-rise brick buildings, however much in need of repair and improved maintenance, are architecturally graceful structures located in a park-like setting with space to create gardens and play areas.

CENTER stands ready to continue to assist TAXPAYER in achieving your goals. We believe, with community-wide commitment and with further training and technical assistance, supported by CIAP funds, you can and will achieve resident management.

The Illinois Income Tax Act at 35 **ILCS** 5/704 requires employers to deduct and withhold income tax for its employees and obligates the employer to remit those taxes to the Department. The Act states that the employer is liable for such tax at 35 **ILCS** 5/705. At issue herein is not the question of the liability for the tax, but whether the taxpayer has shown reasonable cause for an abatement of the penalties that accompany the liability.

The Notice of Deficiency assessed §1001, §1002(a) (c) and §1005 penalties in addition to the underlying tax. The Act at Article 10 (Ill. Rev. Stat. ch. 120 para. 10) explains the penalties and interest provisions. Section 1001 imposes penalties for failure to file a return. It states:

In case of failure to file any return required under this Act on the date prescribed therefor, (determined with regard to any extensions of time for filing), unless it is shown that such failure is due to reasonable cause,...

Section 1002 penalties are imposed for failure to pay tax and §1002(c) refers to the nonwillful failure to pay withholding tax. A similar provision to the above reasonable cause language is found there. There is no reasonable cause language in the statute for an abatement of §1002(a) penalties which are imposed for the negligent failure to pay the tax. The record is unclear as to which sub-section applies.

Section 1005 penalties are imposed for the underpayment of tax. Again, there is reasonable cause language in the statute for an abatement of §1005 penalties.

I have been unable to find any Illinois case law to establish what is considered reasonable cause for the abatement of income tax penalties due to the reliance upon a tax preparer. However, the Income tax negligence penalty, a part of the Internal Revenue Code found at 26 U.S.C.A. §6653, has numerous cases in which the taxpayer was found not to be liable for the tax due to the reliance on an agent. See Betson v. C.I.R. Service, 802 F.2d 365 (C.A.9, 1986); Gaddis v. U.S., 330 F.Supp. 742 (D.C.Miss.1971); Miller v. U.S., 211 F.Supp. 758 (D.C.Wyo.1962); Jackson v. C.I.R., 86 T.C. 492 (1986)

I find that the taxpayer herein has established that they are entitled to an abatement of penalties where it is so allowed.

I therefore recommend that the Director of the Department of Revenue reduce the Notice of Deficiencies by abating the §1001, §1002 and §1005 penalties.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

August 5, 1996